

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION**

MEMORANDUM OF OPINION

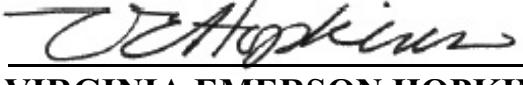
The magistrate judge filed a report and recommendation on June 20, 2014, recommending that Defendants' motion for summary judgment as to Plaintiff's Eighth Amendment sexual assault claim be granted and the action be dismissed with prejudice. No objections to the report and recommendation were filed by the parties.

On July 2, 2014, Plaintiff filed a motion to dismiss this case, which this Court construes as a motion for voluntary dismissal pursuant to Rule 41 of the Federal Rules of Civil Procedure. Plaintiff does not declare whether he desires a dismissal with or without prejudice. (Doc. 19). Defendants have filed a motion for summary judgment and no “stipulation of dismissal signed by all parties who have appeared in this case has been filed.” *See* Rule 41(a)(1)(A)(ii), Fed. R. Civ. P. Under these circumstances, Plaintiff’s case cannot be dismissed on his motion without a court order. However,

Rule 41(a)(2), Fed. R. Civ. P. allows this Court to grant Plaintiff's motion "on terms the court deems proper."

Having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation, the Court is of the opinion the magistrate judge's report is due to be and is hereby **ADOPTED** and his recommendation is **ACCEPTED**. The Court **EXPRESSLY FINDS** Plaintiff's motion to dismiss and Defendants' motion for summary judgment as to Plaintiff's Eighth Amendment excessive force claim are due to be **GRANTED**. Further, Plaintiff's claim is **DISMISSED WITH PREJUDICE**. A Final Judgment will be entered.

DONE this 10th day of July, 2014.


VIRGINIA EMERSON HOPKINS
United States District Judge